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OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 82-1630

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

TED S. HUDSON,

Petitioner,

v.

RUSSELL THOMAS PALMER, JR.,

Respondent.

BRIEF IN OPPOSITION TO THE
PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

DEBORAH C. WYATT*
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QUESTION PRESENTED

I. Does a prisoner retain any Fourth Amendment protection against an official's abusive, illegitimate searches and seizures?

TABLE OF CONTENTS

	<u>Page</u>
QUESTION PRESENTED.....	i
TABLE OF CITATIONS.....	iii
STATEMENT OF THE CASE.....	1
ARGUMENT	
WHILE THE ANALYSIS OF WHAT IS REASONABLE CHANGES WITH THE CIRCUMSTANCES OF A PARTICULAR SITUATION, THE FOURTH AMENDMENT PRINCIPLE AGAINST UNREASONABLE SEARCHES AND SEIZURES APPLIES IN PRISON AND OUT.....	2
CONCLUSION.....	4

TABLE OF CITATIONS

<u>CASES</u>	<u>Page</u>
<u>Bell v. Wolfish</u> , 441 U.S. 520 (1979).....	2,3
<u>Bonner v. Coughlin</u> , 517 F.2d 1311 (7th Cir. 1975), mod. <u>en banc</u> , 545 F.2d 565 (1976), <u>cert. denied</u> , 435 U.S. 932 (1978).....	3
<u>Christman v. Skinner</u> , 468 F.2d 723 (2d Cir. 1972).....	3
<u>Daughtery v. Harris</u> , 476 F.2d 292 (10th Cir. 1973), <u>cert. denied</u> , 414 U.S. 872 (1973).....	3
<u>Jones v. North Carolina Prisoners' Labor Union, Inc.</u> , 433 U.S. 119 (1977).....	3
<u>Pennsylvania v. Mimms</u> , 434 U.S. 106 (1977).....	2
<u>Sostre v. Preiser</u> , 519 F.2d 763 (2d Cir. 1975).....	3
<u>Stroud v. United States</u> , 251 U.S. 15 (1919).....	3
<u>United States v. Hinckley</u> , 672 F.2d 115 (D.C. Cir. 1982).....	3
<u>United States v. Hitchcock</u> , 467 F.2d 1107 (9th Cir. 1972), <u>cert. denied</u> , 410 U.S. 916 (1973).....	3
<u>United States v. Lilly</u> , 576 F.2d 1240 (5th Cir. 1978).....	3
<u>United States v. Robinson</u> , 414 U.S. 218 (1973).....	2,3
<u>United States v. Savage</u> , 482 F.2d 1371 (9th Cir. 1973), <u>cert. denied</u> , 415 U.S. 932 (1974).....	3
<u>United States v. Stumes</u> , 549 F.2d 831 (8th Cir. 1977).....	3
 <u>OTHER AUTHORITY</u>	
42 U.S.C. §1983.....	1

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STATEMENT OF THE CASE

On September 28, 1981, Plaintiff Palmer, Respondent herein, brought a pro se §1983 action against Defendant Hudson, Petitioner herein, who is a guard at the Bland Correctional Center. Plaintiff alleged that he was subjected to destructive, ransacking searches by Defendant for no purpose other than to harass and that during such searches noncontraband property belonging to Plaintiff was seized and destroyed. Plaintiff further alleged other forms of harassment by Defendant Hudson.

On November 17, 1981, the United States District Court for the Western District of Virginia entered summary judgment against Plaintiff, ruling that the allegations, if true, did not state a constitutional deprivation.

Plaintiff timely appealed to the Fourth Circuit Court of Appeals. On January 6, 1982, the Court of Appeals affirmed as to certain of Plaintiff's claims, one of which is the subject of Plaintiff's Cross-Petition for Writ of Certiorari, but held that the allegations did state a possible Fourth Amendment violation.

ARGUMENT

WHILE THE ANALYSIS OF WHAT IS REASONABLE CHANGES WITH THE CIRCUMSTANCES OF A PARTICULAR SITUATION, THE FOURTH AMENDMENT PRINCIPLE AGAINST UNREASONABLE SEARCHES AND SEIZURES APPLIES IN PRISON AND OUT.

The question presented by Petitioner Hudson in this case is whether a prisoner retains any Fourth Amendment protection. Petitioner argues that this issue has not been decided by this Court and urges this Court now to decide this issue by broadly sweeping away any remaining Fourth Amendment protection behind prison walls on the apparent basis that such protection is obviously limited anyway. However, as discussed below, this Court has already written on this slate. In so doing, it has made clear its willingness to undertake a more deliberate, albeit more difficult, balancing approach to the issue of a prisoner's Fourth Amendment rights.

The Fourth Amendment only protects against searches and seizures which are unreasonable. U.S. Const. amend. IV. Accordingly,

[t]he touchstone of...analysis under the Fourth Amendment is always the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security.

Pennsylvania v. Mimms, 434 U.S. 106, 109 (1977) (quotations omitted). Furthermore, what is deemed "reasonable" depends "on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers." Id. (quotations omitted); accord Bell v. Wolfish, 441 U.S. 520, 559 (1979).

It follows, therefore, that when a person is lawfully arrested, for example, his privacy interest "is subordinated to [the] legitimate and overriding governmental concern [of law enforcement]." United States v. Robinson, 414 U.S. 218, 237 (1973) (Powell, J., concurring). Similarly, when a person is legally incarcerated, his privacy interest is subordinated to the legitimate, overriding interests of prison security. Bell v.

Wolfish, supra; cf. Jones v. North Carolina Prisoners' Labor Union, Inc., 433 U.S. 119 (1977) (recognizing the same in the context of the right to association). Because of the exigencies of prison security, the Fourth Amendment protection in prison must necessarily contract, as greater privacy invasions become "reasonable." Bell v. Wolfish, supra at 559. Random searches, searches without probable cause, may become reasonable, to the extent they are necessary to serve overriding, legitimate governmental purposes.

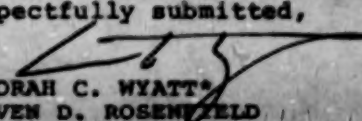
Yet, the reverse side of this same principle, as this Court has recognized, see, e.g., Wolff v. McDonnell, 418 U.S. 539, 555-56 (1974), is that a prisoner does retain those guarantees, including Fourth Amendment guarantees, see Stroud v. United States, 251 U.S. 15 (1919), which do not conflict with prison security or other legitimate governmental interest. Thus, an official's search and seizure which is not legitimate, which serves no legitimate governmental purpose, which was done in an "abusive fashion," Bell v. Wolfish, supra at 560, can never be reasonable under the Fourth Amendment, in prison or out. Id. (dictum). Accordingly, a prisoner has at least some Fourth Amendment protection as this Court recognized as early as 1919, see Stroud v. United States, supra, and as almost all circuits to address this issue have acknowledged. See United States v. Hinckley, 672 F. 2d 115 (D.C.Cir.1982); United States v. Lilly, 576 F. 2d 1240 (5th Cir. 1978); United States v. Stumes, 549 F. 2d 831 (8th Cir. 1977); Sostre v. Preiser, 519 F. 2d 763 (2d Cir. 1975); Bonner v. Coughlin, 517 F. 2d 1311 (7th Cir. 1975), mod. en banc 545 F. 2d 565 (1976), cert. denied, 435 U.S. 932 (1978); United States v. Savage, 482 F. 2d 1371 (9th Cir. 1973), cert. denied, 415 U.S. 932 (1974); Daugherty v. Harris, 476 F. 2d 292 (10th Cir. 1973). But see Christman v. Shipper, 468 F. 2d 723 (2d Cir. 1972); United States v. Hitchcock, 467 F. 2d 1107 (9th Cir. 1972), cert. denied, 410 U.S. 916 (1973).

It was precisely this reasoning which the Fourth Circuit applied to the facts of this case. The facts which Palmer alleged were that Petitioner Hudson, a guard, conducted destructive, ransacking searches of Respondent Palmer's cell and destroyed his property for no reason other than to harass Palmer, as Hudson also tried to do in a variety of other ways. These searches and seizures were for no legitimate purpose; they were official abuses of power. They were, ergo, unreasonable and in violation of the Fourth Amendment. Accordingly, the Fourth Circuit Court of Appeals correctly held that Palmer's allegations of such abusive searches and seizures did state a possible Fourth Amendment violation and that, therefore, summary dismissal had been premature.

CONCLUSION

For the reasons set forth above, the Court should leave undisturbed this holding by the Fourth Circuit Court of Appeals.

Respectfully submitted,



DEBORAH C. WYATT*
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Attorneys for Respondent

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MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

Comes now the Respondent, Russell Thomas Palmer, Jr., by his undersigned counsel, and hereby moves this Honorable Court for leave to proceed in forma pauperis. In support he submits the affidavit attached hereto and represents that he has been granted leave to proceed in forma pauperis in the courts below including the United States District Court for the Western District of Virginia, Abingdon Division, and the Fourth Circuit Court of Appeals, to which a Writ of Certiorari is being sought by Petitioner.

Respectfully submitted,

RUSSELL THOMAS PALMER, JR.

By Counsel


Deborah C. Wyatt
Wyatt, Rosenfield & Green
917 East Jefferson Street
Charlottesville, Virginia 22901
Counsel for Respondent

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Respondent.

AFFIDAVIT IN SUPPORT OF MOTION
FOR LEAVE TO PROCEED IN FORMA PAUPERIS

I, Deborah C. Wyatt, Counsel for Respondent, having been duly sworn, do depose and say as follows:

1. That I was appointed by the Fourth Circuit Court of Appeals to represent Russell Thomas Palmer, Jr., Respondent and Cross-Petitioner herein;
2. That Mr. Palmer proceeded in forma pauperis in the District Court and the Court of Appeals below; and
3. That to the best of my knowledge and belief, Mr. Palmer has recently been released from prison on parole, remains a pauper, and has not contacted me since his release.


DEBORAH C. WYATT

STATE OF VIRGINIA

CITY OF CHARLOTTESVILLE, to-wit:

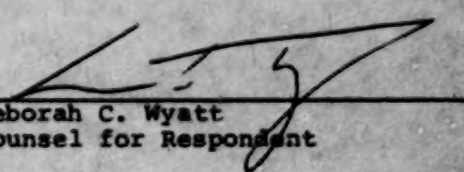
The foregoing Affidavit was subscribed and sworn to before me by Deborah C. Wyatt, on this 4th day of May, 1983.


Notary Public

My commission expires: June 3, 1984.

CERTIFICATE OF SERVICE

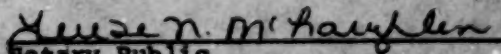
I hereby certify that on or before this 4th day of May, 1983, I mailed or delivered a true copy of the attached Motion for Leave to Proceed In Forma Pauperis, Affidavit, and cover letter pertaining to Case No. 82-1630 to Alan Katz, 101 North Eighth Street, Richmond, Virginia 23219, Counsel for Petitioner, Ted S. Hudson, by having mailed first class postage pre-paid in a United States mailbox or delivered to a United States Post Office.


Deborah C. Wyatt
Counsel for Respondent

STATE OF VIRGINIA

CITY OF CHARLOTTESVILLE, to-wit:

Subscribed and sworn to before me by Deborah C. Wyatt on this 4th day of May, 1983.


Louise N. McLaughlin
Notary Public

My commission expires: June 3, 1984.